

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

██████████

Petitioner.

DOCKET NO. 1-930-777-600

DECISION

██████████ (Petitioner) protested the Notice of Deficiency Determination (Notice) issued by the staff of the Sales/Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission). The Notice proposed sales and use tax, penalty, and interest for the audit period of July 1, 2018, through June 30, 2021, in the total amount of \$149,358.61. After administrative review, the Tax Commission hereby upholds the modified Notice for the reasons set forth below.

BACKGROUND

Petitioner is a ██████████. Petitioner sells and installs ██████████ and related accessories and equipment, and provides ██████████ & handling, foundation, erection, repair, and consulting & design services throughout the northwest United States.

Petitioner is a partnership located in ██████████ Idaho, and was registered with the Idaho Secretary of State on ██████████. The partnership had two shareholders – ██████████ and ██████████ each holding a 50% ownership interest. ██████████ exited the partnership at the end of ██████████ after which ██████████ became the sole owner.

The Bureau reviewed Petitioner's books, records, and supporting documentation, and issued a Notice on November 8, 2023. Petitioner protested the Notice and submitted additional documentation related to out-of-state sales invoices, wholesale purchases for resale, and Idaho

Form ST-101 exemption certificates. On June 13, 2025, the Bureau modified the Notice, updating the tax liability, penalty, and interest, and provided Petitioner with revised audit workpapers. Petitioner continued to disagree with the modified Notice. The Bureau then forwarded the case to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals sent Petitioner a letter outlining the options for redetermining a protested Notice. Petitioner responded by requesting a copy of the modified Notice and detailed post-audit adjustment schedules. Appeals provided the requested documentation. On January 14, 2026, Petitioner submitted correspondence addressing the protested issues for redetermination.

Petitioner asserted that all [REDACTED] [REDACTED] materials, related equipment and accessories purchased and installed for [REDACTED] including transactions involving [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] qualified for production exemption during the audit period based on the submission of valid ST-101 exemption certificates substantiating the purchases as exempt agricultural equipment. Petitioner also argued that related-party reimbursements for shared overhead costs involving [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] were not retail sales subject to tax. In addition, Petitioner requested confirmation that out-of-state projects such as [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] had been properly excluded from the deficiency. Petitioner further requested abatement of penalty and interest due to financial hardship.

On January 22, 2026, Appeals provided Petitioner with a detailed explanation of the protested issues under applicable Idaho law and confirmed that the issues related to shared overhead reimbursements and the out-of-state projects had been resolved in the modified Notice. Petitioner subsequently proposed a settlement offer based on severe economic hardship and doubt as to collectability under Idaho Administration and Enforcement Rule 500. A settlement meeting was conducted on March 31, 2026, and Petitioner's settlement offer was declined. Appeals

provided Petitioner with a copy of the settlement decline letter and information regarding the next available procedural options.

Following the settlement process, Petitioner elected to proceed to a decision. Therefore, the Tax Commission, having reviewed all available information, hereby issues its decision.

LAW & ANALYSIS

The primary issues for decision are whether Petitioner's purchase and installation of [REDACTED] materials, and related equipment for [REDACTED] qualified for the production exemption despite the submission of ST-101 exemption certificates, and whether those purchases and installation activities are subject to Idaho use tax.

DEFINITION OF IMPROVEMENTS TO REAL PROPERTY

Idaho Administrative Rule 067 provides the definition of real property, improvements, fixtures to real property, and the three-factor-test used to determine improvements or fixtures to real property:

067. REAL PROPERTY

01. Real Property. For the purpose of these rules, the term real property means land and improvements or fixtures to the land.
02. Improvements or Fixtures. Improvements or fixtures to real property include:
 - a. Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land.
 - b. Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively.
 - c. Property which increases the market value or productivity on a relatively permanent basis.
03. Three Factor Test. A three (3) factor test may be applied to determine whether an article has become a fixture to real property. The three (3) tests to be applied are:
 - a. Annexation to the realty, either actual or constructive.

- b. Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable.
- c. Intention to make the article a permanent addition to the realty.

Under Idaho Administrative Rule 067, real property includes land and any improvements or fixtures attached to the land. Improvements or fixtures are items that are physically affixed to the land, typically transferred with the land, or that increase the value or productivity of the property on a relatively permanent basis. Whether an item constitutes a fixture is determined under the three-factor test of annexation to the realty, adaptation to the property's use, and intent that the item become a permanent part of the property.

In this case, Petitioner purchased and installed [REDACTED] [REDACTED] materials, accessories and related equipment for [REDACTED]. Based on the criteria set forth in Rule 067, the [REDACTED] [REDACTED] [REDACTED] and related equipment are physically attached to the real property, increase both the utility and value of the property on which they are installed, and enhance the productivity of the land. Accordingly, these items constitute improvements to real property.

TAXABILITY OF CONTRACTOR

Idaho Administrative Rules 012 & 014 address the taxability of contractors improving real property:

012. CONTRACTORS IMPROVING REAL PROPERTY

01. In General. This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable.

- a. A contractor is any person acting as a general contractor, subcontractor, contractee, subcontractee, or speculative builder who uses material and equipment to perform any written or verbal contract to improve, alter, or repair real property.
- c. Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge

sales tax to their customers unless they make a sale of materials only, with no installation.

09. Value. The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means:

a. When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the taxable amount is the cost of material to the contractor who fabricated the goods.

10. Materials Provided by Project Owner.

a. If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he pays sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax.

b. If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is taxable. This tax falls directly upon the contractor and not the owner of the property.

c. A contractor who buys tangible goods cannot avoid tax just because the goods will be built into a structure which will belong to, or be used by an exempt entity.

014. CONTRACTORS/RETAILERS

01. In General. This rule shows how Idaho sales and use tax applies to contractors who are also retailers. The general principles in Rule 012 of these rules also apply to contractor/retailers and should be reviewed along with this rule.

02. Contractor/Retailer. Many contractors are also retailers. They are contractors when they install materials in the course of a residential or commercial service call or contract; but when they sell items or materials they don't install; they are retailers and need to collect sales tax from their customers.

07. Sales of Both Tangible Personal Property and Improvements to Real Property. If a contract includes both retail sales of personal property and improvements to real property, the contractor/retailer collects sales tax on the retail portion of the contract. Also, the contractor/retailer does not pay sales tax to their vendor, they pay use tax on the materials used to perform the real property portion of the contract.

Pursuant to Idaho Administrative Rules 012 and 014, contractors who construct, repair, or improve real property are treated as the consumers of the materials they use and must pay sales or use tax on those materials, rather than charging sales tax to their customers on installed items. The

tax liability remains with the contractor even when the materials are supplied by the project owner, including exempt entities.

Additionally, contractors who also act as retailers must distinguish between those roles. They must collect sales tax when selling tangible personal property without installation but are responsible for paying use tax on materials incorporated into real property improvements.

As both a retailer and a contractor, Petitioner is required to collect sales tax on retail sales where no installation is involved, and to pay use tax on [REDACTED] related equipment, materials and parts purchased and used in improving real property. Even when the equipment and materials are purchased or provided by the project owner, Petitioner remains liable for use tax on these items when acting as a contractor performing installation services.

APPLICABILITY OF PRODUCTION EXEMPTION

Idaho Code section 63-3622D (g)(5) provides that production exemption does not apply to improvements to real property:

63-3622D.PRODUCTION EXEMPTION

(g) Without regard to the use of such property, this section does not exempt:

(5) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

Under Idaho Code section 63-3622D (g)(5), the production exemption does not apply to materials or equipment that are incorporated into real property. Any improvement to real property, fixture, or tangible personal property that becomes a component of real property is excluded from the exemption, regardless of how the property is used.

In this case, although ST-101 exemption certificates were submitted for the agricultural projects at issue, the exemption certificates do not relieve Petitioner of its use tax liability incurred while performing improvements to real property as a contractor.

Petitioner also argued that amendments enacted through House Bill [REDACTED] in 2024 exempt [REDACTED] and similar equipment used directly and primarily in agricultural production, whether or not such equipment is to become a part of real property and whether or not installed by the [REDACTED] a contractor, or a subcontractor. However, these statutory amendments became effective January 1, 2024, and do not apply retroactively to the audit period at issue.

CONCLUSION

The Tax Commission finds that Petitioner's purchase and installation of [REDACTED] materials, and related equipment for agricultural projects does not qualify for the production exemption because the [REDACTED] and related equipment constitute improvements to real property, and the production exemption does not apply to improvements to real property. Accordingly, Petitioner's purchases and installation activities involving [REDACTED] and related equipment in Idaho, are subject to Idaho use tax.

The Bureau's modified Notice accurately reflects the sales and use tax, penalty, and interest due. The Tax Commission reviewed the additions and found them appropriate under Idaho Code sections 63-3045 and 63-3046. Interest has been updated accordingly.

THEREFORE, the modified Notice of Deficiency Determination dated June 13, 2025, is hereby AFFIRMED and MADE FINAL.

IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
7/1/2018- 6/30/2021	\$125,801	\$6,290	\$19,150	\$151,241

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2026.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2026,
a copy of the within and foregoing DECISION was served by sending the same by United States
mail, postage prepaid, in an envelope addressed to:



Receipt No.
